

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

CLAIMANT: John F. Rittel

CASE 41U-0092-R-2023
41U 97046-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. John F. Rittel is the record owner of irrigation claim 41U 97046-00.
2. John F. Rittel was ordered to meet with a DNRC employee to address the

following unresolved issue remark decreed on claim 41U 97046-00:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. On March 3, 2023, DNRC Water Resource Specialist Jason Larsen filed a Memorandum stating the Claimant failed to contact him. (Doc.¹ 2.00) Nevertheless, Mr. Larsen reviewed information available to him, confirmed the place of use was historically irrigated by “a dike or something similar to a small diversion dam,” and recommended the point of diversion legal land description be modified as follows:

*Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|----------------------|-----------------|---------------------|------------|------------|------------|-----------------|
| 1 | | SENESEW | 20 | 16N | 5W | LEWIS AND CLARK |
| Period of Diversion: | | APRIL 1 TO AUGUST 1 | | | | |
| Diversion Means: | | DIKE | | | | |

4. A deadline was set to determine if John F. Rittel agreed or disagreed with Mr. Larsen’s recommendation. The Order Setting Filing Deadline indicated that if nothing were filed by the deadline, this Water Master would conclude that John F. Rittel agrees claim 41U 97046-00 should be modified as recommended by Mr. Larsen. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Section 85-2-248, MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. Claim 41U 97046-00 should be modified as shown in Finding of Fact No.
- 3.
2. The issue remark should be removed from claim 41U 97046-00.
A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

John F. Rittel
Black Tail Ranch
4440 South Fork Trail
Wolf Creek, MT 59648

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 97046-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN F RITTEL
BLACK TAIL RANCH
4440 SOUTH FORK TRAIL
WOLF CREEK, MT 59648

Priority Date: APRIL 1, 1900

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 269.28 GPM

***Volume:** 92.00 AC-FT

Climatic Area: 5 - LOW

***Maximum Acres:** 20.00

***Source Name:** ROUTT CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|-----------------|
| 1 | | SENE SW | 20 | 16N | 5W | LEWIS AND CLARK |

Period of Diversion: APRIL 1 TO AUGUST 1

Diversion Means: DIKE

Period of Use: APRIL 1 TO AUGUST 1

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|-----------------|
| 1 | 20.00 | | | 20 | 16N | 5W | LEWIS AND CLARK |

Total: 20.00